



MTRA Response to the AAC Consultation

Chapter 5: Are there further lessons for Alternative Arrangements on the UK-Irish Border which can be drawn from the case studies?

This chapter gives details on lessons from other borders. It does not give any detail on how trade remedies are enforced within these arrangements. It is essential that the report considers; a) the extent to which there might need to be still some border infrastructure/checks necessary for enforcement of trade policy measures in the various case studies b) if there are no border checks, how trade remedies and other trade policy measures are enforced.

The report is not clear on the extent to which any of the case studies include an infrastructure free border. MTRA's understanding is that none of the borders discussed in the case studies is infrastructure free. The novel and experimental nature of the proposed alternative arrangements, therefore, needs to be clarified. These issues are critical in relation to the issues discussed below in Chapter 8.

Chapter 6: Do you agree with proposals to use the WTO Frontier Traffic Exemption and WTO National Security Exemption to support Special Economic Zones in Derry/Londonderry – Donegal and Newry- Dundalk? What challenges and opportunities do you see and how should they be addressed?

The two WTO exemptions that are cited by the report are worthy of consideration in terms of ensuring the WTO consistency of post-Brexit UK trade & customs policy. Although this is one of many important issues, the WTO consistency of any alternative arrangement is not the critical issue. By far the more important issue is coming up with a system that would be sufficiently watertight to satisfy the EU that EU trade policy would not be undermined and, as important, would not undermine UK trade policy. The exemptions would only be relevant in the future as a potential defence for the adoption of any provisions that violated WTO commitments such as MFN, national treatment etc. They do not relate to the practical issues of how the Irish border is solved. The issues raised in chapter 8 below are of primary importance.

Chapter 8: What can be done to minimise illegal trade at the border, within the context of Alternative Arrangements and the constraints outlined in the report?

MTRA welcomes the considerable work that has gone into this paper. There are some interesting ideas about longer term possible solutions to the IE/NI border issues but more

detailed work is needed where different tariffs apply on how this is enforced with the EU, particularly to avoid circumvention of differential tariffs (including trade remedies).

There are two issues of primary concern here. First, the EU needs to be convinced that EU trade policy will not be undermined by a softer NI/IE border than exists at other external EU borders. Second, to the extent that the UK may have higher import duties than the EU (e.g. which could be possible in the case of anti-dumping and countervailing duties), the enforceability of such measures is critical in ensuring that UK industry is not disadvantaged by unfair trade evading measures that have legitimately been put in place. The NI/IE border needs to be able to ensure that such products cannot easily circumvent UK trade remedies through the product from a third country being shipped to Ireland and therefore easily crossing the border into the UK.

The paper makes bold claims on the effectiveness of customs enforcement. On page 68, 4th para, the paper points out that customs have the authority to carry out administrative investigations on EU/Swiss trade up to 3 years after a transaction. It then goes on to say that “These investigations prove to be very effective in fighting fraudulent declarations”. No evidence is cited on this. The problem in this area is that fraud/circumvention may go undetected so statistical analysis on the effectiveness of such investigations needs much more careful analysis: if trade remedies were circumvented, many affected British manufacturers might not survive 3 years.

MTRA is concerned that issues relating to enforcement of differential tariffs (including trade remedies) are underestimated in the report.

- An exception for traders below the VAT threshold will not necessarily be significant at a macroeconomic level. However, at a microeconomic level, the impact could be highly significant. Trade remedies are imposed at a microeconomic/product specific level. Thus, in terms of the market for a specific product subject to a trade remedy, the impact of this exception could be substantial. In terms of EU duties, where the UK does not have an equivalent duty, there would be an incentive for small businesses to import the product via the UK and pass through the NI/Ireland border to avoid the EU duties. The report should explicitly consider this risk.
- The first paragraph of page 103 states that ‘under a customs union or FTA that the UK and EU would agree, there would be no differences in duties between the two customs territories so that risk is essentially manageable’. This would be true in the case of a customs union but not necessarily in the case of an FTA. An FTA would most likely mean that products of Irish/UK origin would pay no duty. However, in the case of an FTA, the EU and UK would not have a common trade policy and, therefore, differential duties (including trade remedies) will apply to products of third country origin. To say that the risk is ‘manageable’ is to brush over the significant and multiple problems that would arise in cases where differential duties applied.
- The fourth paragraph on page 104 highlights the EU’s anti-circumvention provisions and the Commission’s anti-fraud office (OLAF). The UK will have equivalent circumvention

provisions and HMRC already investigates fraud. However, it can be noted that the enforcement of EU trade remedies is not straightforward and there are many cases of circumvention that go undiscovered. MTRA members have personally witnessed anecdotal evidence on this over the years including cases of circumvention that have not been discovered. Sometimes it is only much later when damage has already been caused to EU industry that circumvention is discovered. Of course, this is in the case of the EU applying trade remedies at a current hard external EU border. The softening of one of the EU/UK borders will significantly increase the prospect of circumvention of measures. This would undermine any UK-specific trade remedies with circumvention coming through Ireland. For this reason it is highly unlikely that this will ever be acceptable to the EU.

- The fifth paragraph on page 104 states that smuggling is a fact of life at all borders and sets the goal of ensuring that ‘current levels of smuggling do not increase to unacceptable levels’. **No increase in circumvention of EU or UK trade remedies would be acceptable.** The point made above needs to be made again here, that the microeconomic effects on particular industries may be devastating even if it was the case that, at a macroeconomic level, the level of circumvention/smuggling may be ‘acceptable’.
- The penultimate paragraph on page 107 suggests a new set of UK laws to combat fraud/smuggling with very severe penalties. It suggests that this could convince the EU to accept that the risk of circumvention of dumping/subsidy duties could be adequately managed. This is highly unlikely to be the case. The risk of circumvention significantly increasing with a softer border is likely to be unacceptably high.
- The same paragraph talks about avoiding loss to the EU budget and the threat of non-collection of duties. This is not just an ordinary ‘smuggling’ issue. At the macroeconomic level, the average EU import duty is relatively low and thus any smuggling, although reducing revenue collected, does not necessarily have significant impact on markets/industries. However, the paper fails to adequately reflect that dumping/subsidy duties are not just ordinary tariffs but serve a critical purpose in countering established and proven cases of unfair trade where injury is occurring to the domestic manufacturer.
- Case studies (page 162 to 167) – no case studies are provided in relation to anti-dumping or anti-subsidy duties and how this would work to ensure that both EU and UK trade remedies are not undermined. It would be absolutely necessary to work through how trade remedies would be enforced under the various proposals contained in the paper.

Finally, are there any additional comments you would like to make about the interim report?

The Manufacturing Trade Remedies Alliance (MTRA) is a coalition of several trade associations and trade unions with an interest in UK manufacturing. Formed in early 2017, our organisations believe that making things in the UK is good for our economy and society. On a level playing field our manufacturers are able to compete internationally and succeed. MTRA’s objective is to ensure that the UK’s trade policy enables that level playing field and that this should include a robust and efficient trade remedies regime

MTRA welcomes the opportunity to contribute to this consultation and the fact that some businesses and business organisations have been involved so far. As stated above under comments on Chapter 8, MTRA views the paper as a valuable contribution to the debate on possible solutions to the Irish border issue. However, from the perspective of enforcement of future UK trade remedies, there are critical issues that need considerably more research and analysis. It would be dangerous for the UK to proceed with the solution outlined by the paper without this additional work. MTRA understands that the paper is solution focused and has attempted to be bold and optimistic in its approach. The paper does acknowledge particular difficulties at several points throughout but does not adequately consider them further in the analysis or conclusions. These difficulties are sufficient for much more caution in the conclusions made by the paper. Significantly more detailed analysis is required on some of these issues. The system proposed is unprecedented and experimental and there are no case studies of a customs regime of this nature. It is not clear that such an ambitious system could work so there would be significant risks.

The solution focus of the paper means that it has not considered political realities in relation to the extent to which the EU will be open to considering such proposals. However, the political realities are critical and, unless there is a common basis for negotiation between the UK/EU27, nothing else in the proposals is relevant. In the end, the acid test is not whether something works in theory or whether it is WTO compatible. The test is whether or not the Irish Government and the EU are prepared to countenance it as part of the negotiation. It is likely that any proposal that requires the EU to significantly change its internal rules to suit the UK is going to be a non-starter. The EU will have the same concerns about trade remedy enforcement raised above as well as enforcement of other differential trade policy measures. This highlights the need for more analysis to be undertaken to more fully take into account the potentially great risks that such a bold customs arrangement for the NI/Ireland border would incur. If such proposals were ever to be considered by the EU, all of these concerns would have to be addressed in detail. In the optimistic case that the EU would even be open to considering the proposals contained in this paper, the complexity of the negotiations would be such that it would be unlikely for them to be completed within the 3 years that the paper suggests.